

STATE OF MICHIGAN
COURT OF APPEALS

In re HARMON, Minors.

UNPUBLISHED
September 15, 2016

No. 331394
Kent Circuit Court
Family Division
LC No. 13-051092-NA

Before: MURRAY, P.J., and HOEKSTRA and BECKERING, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court order terminating his parental rights to the minor children, CH, TH, and KH, under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist) and (g) (failure to provide proper care and custody). Because the trial court did not clearly err by terminating respondent's parental rights, we affirm.

This case began in May of 2013 with the filing of a petition containing allegations against respondent of substance abuse, physical neglect and improper supervision of the children, educational neglect, incarceration, and criminal conduct involving controlled substances, retail fraud, and domestic violence. Respondent admitted the allegations in the petition, and the trial court assumed jurisdiction over the children and placed them in foster care. Over the course of 2-1/2 years, respondent received numerous services from the Department of Health and Human Services (DHHS) aimed at reunification of respondent and his children. Respondent's compliance with his case service plan was sporadic. For example, during the years this case was pending, respondent missed visits with the children and he arrived late for visits, he failed to attend school meetings and medical appointments regarding his children, he failed to communicate with the children's therapists, he failed to follow through with referrals and services, and he repeatedly tested positive for controlled substances. However, at some points during the case, respondent made efforts to comply with his service plan and he appeared to show notable progress, resulting in the approval of overnight visits with his children. Indeed, respondent came close to having his children returned to him on three separate occasions. Unfortunately, on each such occasion, respondent soon relapsed into his old pattern of behaviors and he again tested positive for controlled substances. Ultimately, in December of 2015, more

than 2-1/2 years after the children entered foster care, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g).¹ Respondent now appeals as of right.

On appeal, respondent contends that the trial court clearly erred by terminating his parental rights. With regard to the statutory grounds for termination, respondent maintains that he rectified the conditions leading to the adjudication, meaning that termination was improper under MCL 712A.19b(3)(c)(i). He also argues that he has shown progress, particularly in recent months, and that he will be able to provide the children with proper care and custody within a reasonable time, such that termination was inappropriate under MCL 712A.19b(3)(g). Finally, respondent challenges the trial court's best interests determination, arguing that termination is not in the children's best interests considering respondent's bond with the children and the children's behavioral issues which may pose an obstacle to their adoption.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). This Court reviews the trial court's determination for clear error. *Id.*; MCR 3.977(K). "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "We give deference to the trial court's special opportunity to judge the credibility of the witnesses." *Id.*

Termination is appropriate under MCL 712A.19b(3)(g) when "[t]he parent, without regard to intent, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." "[A] parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Likewise, "[a] parent's failure to participate in and benefit from a service plan is evidence that the parent *will not be able to* provide a child proper care and custody" in the future. *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) (emphasis added).

Here, respondent's noncompliance with his service plan and his relapsing substance abuse evidenced his failure to provide proper care and custody. Most notably, respondent had issues with substance abuse, which he failed to address in keeping with the case service plan and which impacted his ability to effectively parent his children. There were multiple times when respondent was close to reunification and then tested positive for cocaine or marijuana. Most recently, the caseworker testified that respondent was referred to NA/AA meetings at least three times a week after his latest positive screen, but that respondent did not attend any meetings in the first two months following this referral. Although respondent eventually began attending meetings when alerted to the upcoming termination hearing, the caseworker testified that

¹ Petitioner also sought termination under MCL 712A.19b(3)(c)(ii) and (j). However, the trial court declined to terminate under (j) (reasonable likelihood of harm) and failed to make a ruling under (c)(ii) (failure to rectify other conditions causing the children to come within the court's jurisdiction).

substance abuse was identified as a need for respondent every reporting period, and the case was open for approximately 2-1/2 years. During that time, respondent received “multiple referrals” and yet he often failed to follow-up appropriately, and he ultimately failed to demonstrate consistent progress. Indeed, respondent never even acknowledged his most recent cocaine use—despite the positive screen. This history of relapse and regression largely negates his increased involvement in the weeks leading up to the termination hearing. As the trial court reasoned, the case was open for approximately 2-1/2 years, during which time respondent proved unable to maintain any notable progress and instead consistently regressed to his old behaviors.

Aside from respondent’s substance abuse issues, according to the parent-agency treatment plan, respondent was to communicate with the children’s therapists at least twice a month, attend medical appointments, and ask about the children’s well-being after appointments he was unable to attend. The caseworker testified that respondent failed to reach out to the children’s therapists and was not very involved with getting updates on how the children were doing. The caseworker further testified that respondent failed to follow up with the children’s appointments, did not have a lot of knowledge with respect to the children’s medications, and did not inquire about what was happening with them. Moreover, respondent’s treatment plan required him to attend school meetings. The caseworker testified that she went to five meetings for the children’s suspension and that respondent did not attend any of those meetings.

Given the length of the case and respondent’s noncompliance, lack of accountability, and his substance abuse issues—including multiple relapses when he was close to reunification—there was not a reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the children’s ages. Thus, we are not left with a definite and firm conviction that a mistake has been made, and the trial court did not clearly err in finding clear and convincing evidence to support termination under MCL 712A.19b(3)(g). Further, although only one statutory ground needs to be established to warrant termination, similar reasons—notably respondent’s failure to rectify his substance abuse problems—supported termination under MCL 712A.19b(3)(c)(i).

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). The minor child—not the parent—is the focus of the best-interest determination. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). In making its determination, the trial court may consider factors such as “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Other relevant factors include “the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of adoption” *In re White*, 303 Mich App at 714. “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App at 90. This Court reviews the trial court’s decision regarding a child’s best interests for clear error. *In re White*, 303 Mich App at 713.

Here, although there was a bond between respondent and his children, the children had been in care since May 2013 and the trial court reasonably concluded that the children should not

continue to wait for the stability respondent had proven unable to provide. The children had behavioral issues coming into care, and they made “good progress” in their placements as the case progressed. For instance, the caseworker testified that CH made a lot of progress in his placement, that his behavioral issues improved, and that he was “doing amazing.” With respect to TH, the caseworker testified that his issues were ongoing, but being addressed in counseling. The caseworker further testified that KH was doing better, that he was reacting to his medications well, doing well in a new school, and that his therapy sessions were reduced because of his progress. All three of the children desperately needed stability, permanence, and finality after being in care for approximately 2-1/2 years and struggling during that time with the uncertainty occasioned by respondent’s pattern of relapses. Further, the caseworker testified that all three of the children could be adoptable. In contrast, respondent had a history of narcissistic behavior throughout the case, demonstrated by his numerous relapses and other actions, such as leaving the children with his mother during an unsupervised parenting visit in order to attend a concert rather than spending time with the children. Given respondent’s pattern of placing his own interests before his children and the children’s need for permanence, stability and finality, termination of respondent’s parental rights was in CH’s, TH’s and KH’s individual best interests. That is, while respondent had a bond with the children, as the trial court reasoned, this was “one of those cases . . . where love, unfortunately, just [was] not enough.” Overall, the trial court did not clearly err in finding that termination was in the minor children’s individual best interests. *In re Moss*, 301 Mich App at 90.

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Jane M. Beckering